

*Briefing Paper:*

# CURRENT ELECTION ADMINISTRATION LITIGATION\*

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\*This briefing paper summarizes election administration litigation that is active or has been settled from January 1, 2006 to the present, excluding campaign finance reform and redistricting litigation

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## CURRENT ELECTION ADMINISTRATION LITIGATION





# VOTER REGISTRATION

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## *Project Vote et. al. v. Blackwell et. al.*

*Case No. 1:06-cv-10628. United States District Court, Northern District of Ohio (Eastern Division).*

- **Complaint:** This lawsuit challenges an Ohio law requiring that compensated voter registration workers register with the state after completing an on-line training course and turn in collected voter registration applications directly to the secretary of state or local board of elections. Individuals that violate any provision of the statute are subject to criminal charges, up to a fifth degree felony. The complaint claims the law is unconstitutionally vague, violates the Equal Protection clause of the United States Constitution because it only requires compensated (as opposed to volunteer) workers to receive training and register with the state, violates the First Amendment by creating an excessive burden on core political speech and associational rights, violates the National Voter Registration Act because it burdens protected voter registration drives and requires unnecessary information on the mail voter registration application and violates the Voting Rights Act because it disparately impacts minority citizens.
- **Status:** The complaint was filed July 6, 2006 in US District Court for the Northern District of Ohio. On September 1, 2006, Judge O'Malley issued a preliminary injunction preventing enforcement of all provisions of the law challenged by the plaintiffs. Specifically, she ruled that the direct return provision was an extreme burden, unwieldy and did not serve any of the state's articulated purposes. Defendants did not appeal the preliminary injunction and the case is pending before the district court.
- **Plaintiffs and Counsel:** Plaintiffs are Project Vote, Association of Community Organizations for Reform Now (ACORN), American Association of People with Disabilities, People for the American Way Foundation, Communities of Faith Assemblies Church, and Common Cause Ohio. Plaintiffs are represented by Project Vote, the Brennan Center for Justice at New York University, the Advancement Project, the law firm of Perkins Coie and the McTigue Law Group.

## *League of Women Voters et. al. v. Cobb et. al.*

*Case No. 06-21265-CIV-Jordan. United States District Court, Southern District of Florida.*

- **Complaint:** The lawsuit, filed in May 2006, challenges a Florida law that imposes severe fines on individuals who do not transmit mail voter registration applications to election officials within ten (10) days or by book closing dates. Individuals or directors of organizations are strictly liable for transmitting the forms in a timely manner and are subject to fines that range between \$250 and \$5,000. Political parties are exempt from the fines. The complaint alleges that by excluding political parties the fines violate the Equal Protection clause of the United States Constitution and that the fines chill individuals' First Amendment core political speech and associational rights to conduct voter registration.

- **Status:** A federal court granted a preliminary injunction prohibiting the state from enforcing the monetary penalties of Florida statutes, finding that the law. The State has appealed the ruling and it is before the US Court of Appeals, Eleventh Circuit.
- **Plaintiffs and Counsel:** The plaintiffs in the case are League of Women Voters of Florida, People Acting in Community Together (PACT), American Federation of State, County and Municipal Employees (AFSCME), Service Employees International Union (SEIU), and Marilyn Wills, president of the Tallahassee League of Women Voters. Plaintiffs are represented by the Brennan Center, Advancement Project, Becker & Poliakoff PA and Kramer, Levin, Naftalis & Franklin LLP.

## ***Gonzalez v. State of Arizona and Navajo Nation v. Brewer***

*Case No. CV 06-1268-PHX-ROS and 3:06-1575-PHX-ROS, United States District Court, Arizona.*

*Case No. 06-16702, 06-16706, United States Court of Appeals for the Ninth Circuit.*

- **Complaint:** The lawsuit, filed in May 2006, challenges Proposition 200, an initiative adopted by the State of Arizona that requires voter registration applicants to submit evidence of citizenship and mandates county registrars to reject applications that do not include such evidence. The evidence is limited to driver licenses issued after October 1 1996, a passport, naturalization documents or a Bureau of Indian Affairs card number. Original naturalization documents have to be shown personally to the County Recorder. The Complaint alleges violations of the Supremacy Clause of the United States Constitution, free speech and associational rights to conduct voter registration drives under the First Amendment, the Twenty Fourth Amendment's prohibition of poll taxes, the Equal Protection Clause of the Fourteenth Amendment, Sections 2 and 5 of the Voting Rights Act, Title VI of the Civil Rights Act and the National Voter Registration Act (NVRA).

On May 9, 2006, Plaintiffs applied for a Temporary Restraining Order to prevent the State from failing to distribute, use and accept the federal mail registration application prescribed by the Election Administration Commission and enjoining Proposition 200's registration requirements. The Judge denied the application for a restraining order, holding that the plain language clearly allowed states to require applicants to provide other information, including documents. She also rejected the claim that the additional documentation was a form of authentication prohibited by the NVRA.

- **Status:** On June 20, 2006, the Plaintiffs requested a preliminary injunction on grounds that the State of Arizona failed to undergo proper federal preclearance before ceasing use of the national voter registration form. The Plaintiffs also claimed that the voter ID requirements had a disparate impact on Latino voters and diverted funds from voter registration drives. The case is currently pending before the 9<sup>th</sup> Circuit after the Supreme Court vacated the Circuit's issuance of an injunction pending appeal.
- **Plaintiffs and Counsel:** Plaintiffs are represented by Nina Perales and Daniel R. Ortega, Jr. of the Mexican American Legal Defense Fund (MALDEF).

## ***Diaz et. al. v. Cobb et. al.***

*Case No. 04-22572-Civ-King, United States District Court, Southern District of Florida.*

- **Complaint:** The lawsuit, filed in 2004 but amended in 2006, challenged Florida's policy, and later law, that required registrars to reject voter registration applications as incomplete if the applicant failed to check the citizen or mental capacity check boxes. The complaint

included claims that the law violated the National Voting Rights Act (NVRA) and Voting Rights Act (VRA) because the check boxes were both redundant and immaterial (because the affirmation signed by the applicants state that they were qualified under Florida law), the VRA because the state's acceptance of the federal forms, that do not include the check boxes, is not uniform with its requirement that the boxes be checked on the state form, the convoluted language for the mental capacity check box is a literacy test, and the due process and equal protection clause of the Fifth and Fourteenth Amendment of the Constitution because the practice suppresses the fundamental right to vote and is applied differently between the federal and state forms.

- **Status:** The State of Florida moved to dismiss the suit and the Court agreed to dismiss the VRA materiality claim, VRA uniformity, VRA literacy test and the NVRA challenge to the form claims. The primary basis of the order was that HAVA included the check boxes so Congress could not have intended to make a state's requirement that the boxes be checked a violation of the NVRA or VRA. The Court agreed to allow Plaintiffs to file a more definitive statement with respect to the due process and equal protection claims. The Plaintiffs have done so and are awaiting the Court's ruling.
- **Plaintiffs and Counsel:** Plaintiffs include Plaintiffs are represented by the Advancement Project, AFL-CIO and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

## *Assoc. of Community Organizations for Reform Now (ACORN) et. al. v. Cox et. al.*

*Case No. 1:06-CV-1891. United States District Court, Northern District of Georgia, Atlanta Division.*

- **Complaint:** This lawsuit challenges a Georgia State Board of Election rule that states: "No person may accept a completed registration application from an applicant unless such application has been sealed by the applicant. No copies of completed registration applications shall be made." The complaint claims the regulation violates the National Voter Rights Act and free speech and associational rights under the First Amendment by creating an undue burden on an organization's right to assist applicants complete and submit voter applications to election officials. The regulation serves no state interest that warrants such a burden.
- **Status:** The Court issued a preliminary injunction on September 28, 2006, finding the regulation violated the First Amendment but did not violate the NVRA. The defendants did not appeal the preliminary injunction. Plaintiffs' have asked the Court to reconsider the NVRA ruling and the case is awaiting trial in the district court.
- **Parties:** Plaintiffs are Project Vote, ACORN, Georgia Coalition for the People's Agenda and the Georgia State Conference of the NAACP. Plaintiffs are represented by Bradley E. Heard from Molden, Holley, Fergusson, Thompson & Heard LLC, Project Vote and the Advancement Project.

# STATEWIDE DATABASES & LIST MAINTENANCE

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## *United States v. Indiana et. al.*

*Case No. 1:06-cv-1000-RLY-TAB. United States District Court, Southern District of Indiana, Indianapolis Division.*

- **Complaint:** This lawsuit alleged the State of Indiana “has failed to conduct a general program that makes reasonable efforts to identify and remove ineligible voters” in violation of the list maintenance requirements of the National Voter Registration Act. 42 USC 1973gg-6. The U.S. supports its claim by noting that Indiana has 19 of 92 counties with more than 100% of the voting age population registered to vote and that the state failed to remove duplicate and ineligible voters it found in the course of developing its HAVA-mandated statewide database.
- **Status:** This case was filed in US District Court, Eastern Division, on June 27, 2006. A consent decree was filed simultaneously. In the consent decree, the state agreed to, among other things, (1) notify county election officials of potentially duplicate registrations and deceased voters on or before June 30, 2006, (2) require county officials to verify the eligibility of the potentially invalid registration and remove from the list any voter positively identified as ineligible, and (3) conduct a statewide mailing to identify voters who are ineligible to vote and update voting records as appropriate by August 10, 2006.
- **Plaintiffs and Counsel:** The Voting Section of the US Justice Department of Justice brought this lawsuit against the State of Indiana and the Co-Directors of Indiana Elections Division in their official capacity as the designated “State chief elections official” under the NVRA.

## *Washington Association of Churches v. Reed*

*Case No. 06-0726 United States District Court, Western District of Washington.*

- **Complaint:** This lawsuit, which seeks declaratory and injunctive relief, challenges a Washington law that improperly implements the federal Help America Vote Act (HAVA) of 2002. The law (RCW 29A.08.107) requires the Secretary of State to match identifying information on a voter registration application—usually a drivers’ license number, state ID card number, or Social Security number—to the corresponding government database. If a match cannot be made, and an applicant doesn’t correct the situation within 45 days, the applicant is not registered. The complaint alleges Washington’s law conflicts with HAVA, violates the U.S. Constitution, the Voting Rights Act and the National Voter Registration Act (NVRA).
- **Status:** On August 1, 2006, the Court granted Plaintiffs’ motion for a preliminary injunction on the grounds that the statute’s conditioning of voter registration on an affirmative match violates HAVA and the materiality provision of the Voting Rights Act. Since the Court ruled on the statutory claims, the Court did not consider the Constitutional claims. The defendants did not appeal the preliminary injunction and the case pending before the district court.



- **Parties:** The plaintiffs are Association of Community Organizations for Reform Now (ACORN), Washington Association of Churches, Service Employees International Union, Local 775 (SEIU), Washington Citizen Action, Organization of Chinese-Americans (Greater Seattle Chapter), Chinese Information and Service Center, Japanese American Citizens League (Seattle Chapter), and Filipino American Political Action Group of Washington. Plaintiffs are represented by the Brennan Center for Justice at New York University and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

## ***Commonwealth of Kentucky v. State Board of Elections et. al. and Secretary of State Trey Grayson***

*No. 06-CI-00610. Commonwealth of Kentucky, Franklin Circuit Court, Division II.*

- **Complaint:** The complaint seeks declaratory and injunctive relief for a purge of approximately 8,000 Kentucky voters conducted by the State Board of Elections. The purge resulted from a pilot project in which Kentucky and the neighboring states of South Carolina and Tennessee compared voter registration lists to identify duplicate registrations. Voters whose names appeared on Kentucky's list and another state's list were purged if the voter's Kentucky registration date was earlier than the registration date in the second state. The complaint alleges violation of Kentucky's state law implementing the National Voter Registration Act, which prohibits, among other things, purges or systematic list maintenance programs that occur within 90 days of a federal election. The complaint also alleges the Defendants failed to send notice letters to voters whom the Defendants believe have changed addresses before canceling the voters' registration, failure to place the voters on an inactive list, and failure to wait the requisite two federal election cycles before removing voters from the list.
- **Status:** On October 2, 2006, a Franklin Circuit Court judge ruled that the Defendants had conducted an illegal purge under Kentucky law. The court reasoned that "matching" the name of a voter in one state to the name of a voter in another state was "other sources" of information about a voter's change of address, not a request from the voter to cancel her registration. Consequently, election officials were obligated to follow the provisions of Kentucky law that dealt with a voter's change of address, including providing the voter with notice and waiting two federal elections before canceling the voter's registration status. These provisions implement the National Voter Registration Act of 1993. The case is still technically pending but the parties have all agreed on a resolution to the matter.
- **Parties:** This lawsuit is brought on behalf of the purged voters by the Office of the Attorney General. The State Board of Elections and its individual members, along with Secretary of State Trey Grayson, are the defendants.

## ***United States v. Missouri et. al.***

*Case No. 05-4391-CV-C-NKL, U.S. District Court, Western District of Missouri.*

- **Complaint:** The United States filed suit against the State of Missouri and its Secretary of State in her official capacity, alleging that the State violated the voter list maintenance provisions of the National Voter Registration Act (NVRA) by (1) failing to conduct a program to remove voters who had moved or were deceased; (2) failing to implement a program that was uniform, non-discriminatory, and in compliance with the Voting Rights Act; (3) failing to implement a program to prevent the removal of voters from the list for failure to vote; and (4) failing to conduct a program to remove ineligible voters from the list at least 90 days before a primary or election.

- **Status:** The district court granted partial summary judgment to the defendants on the claims that sought to hold them liable for enforcing the NVRA against local election authorities. The court denied summary judgment on the claims asserting that Defendants themselves had not complied with the NVRA, but held that in deciding that issue it would apply the “reasonable effort” standard.
- **Plaintiffs and Counsel:** The Voting Section of the Department of Justice brought this suit. Defendants include State of Missouri and Secretary of State Robin Carnahan.

# VOTER ID REQUIREMENTS

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## *ACLU v. Chavez*

*No. CIV 05-1136 MCA/WDS, District Court New Mexico.*

- **Complaint:** The lawsuit challenged an ordinance passed in the City of Albuquerque that required voters to present a “current valid identification card containing the voter’s name and photograph” in order to vote unless they voted by absentee ballot. The ordinance did not define current identification card but gave examples, including the voter identification card which could be obtained when registering at the local election office. A photographic id is not necessary to obtain a voter identification card. The complaint alleged violations of the equal protection clause because voters in person are treated differently from absentee voters, the Civil Rights Act of 1964 because it treats in person voters differently and the identification requirement serves no valid purpose. An amended complaint also alleged the ordinance violated the equal protection clause based on affluence and gender, particularly the homeless who may not have identifications with their address, the Voting Rights Act of 1965 because it adversely affects non-whites, and the First Amendment because the term current valid identification is subject to arbitrary interpretation and will be used only in cases where voters decide to wait until election day to vote.
- **Status:** On February 12, 2007, the District Court issued final decision on Summary Judgment, finding the ordinance violated the Equal Protection Clause but not the First Amendment and enjoined the City from enforcing the identification requirement.
- **Plaintiffs and Counsel:** The Plaintiffs are the American Civil Liberties Union of New Mexico, the League of Women’s Voters of Albuquerque/Bernalillo County, New Mexico Coalition to End Homelessness and four individual voters. They are represented by Joseph P. Kennedy and Shannon L. Oliver of Kennedy & Oliver, the ACLU of New Mexico and James R Scarantino.

## *In Re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*

*SC 130-589 Michigan Supreme Court.*

- **Case:** On April 24, 2006 the Michigan Supreme Court granted the House of Representatives request to issue an advisory opinion on the constitutionality of a photographic voter ID law.
- **Status:** Numerous organizations with interests in voter’s rights have submitted amicus briefs. Oral Arguments were heard on November 13, 2006. The case is still pending.

## Common Cause v. Billups

No. 4:04-cv-00201-HLM. U.S. District Court, Northern District of Georgia.

406 F.Supp.2d 1326. U.S. Court of Appeals, 11<sup>th</sup> Circuit.

- **Complaint:** This lawsuit challenges a Georgia statute requiring that all voters provide valid, state-issued photo identification prior to voting. The cost of obtaining valid photo ID ranges from \$20-35. Last fall, public interest groups successfully challenged Georgia's statute, obtaining a temporary injunction against its enforcement in the federal district court in Rome, Georgia. The 11th Circuit Court of Appeals upheld the district court's decision. The court stated that Georgia's ID requirements unnecessarily burdened the right to vote and represented an illegal poll tax. The court also held that the statute violated the Equal Protection Clause of the Fourteenth Amendment since it did not similarly burden in-person and absentee ballots. The court was especially concerned that there were no incidences of in-person fraud for at least nine years preceding enactment of Georgia's photo ID requirements. The fact that fraud concerns were limited to cases involving absentee ballots supported the argument that the state's photo identification requirements were merely a pretext to prevent poor, elderly, and members of minority groups from voting.
- **Status:** Georgia's legislature amended the statute to allow the state to distribute free identification cards and is proceeding to implement the photo ID requirement. Advocates have returned to district court and obtained a second injunction to block the amended statute. The parties have agreed to stay further proceedings in the case pending the outcome of the case challenging the same law filed in State Court (see *Lake v. Purdue*).
- **Plaintiffs and Counsel:** The Plaintiffs include Common Cause, League of Women Voters of Georgia, The Central Presbyterian Outreach and Advocacy Center, Georgia Association of Black Elected Officials, NAACP, Georgia Legislative Black Caucus, and Concerned Black Clergy of Metropolitan Atlanta. The ACLU of Georgia, ACLU Southern Regional Office, Lawyers' Committee For Civil Rights Under Law, NAACP Legal Defense & Educational Fund, MALDEF, and the AARP Foundation have provided assistance with legal representation.

## Lake v. Purdue

No. 2006-CV-119207 Superior Court of Fulton County, Georgia.

- **Complaint:** This lawsuit represents another chapter in the battle initiated in *Common Cause v. Georgia* in response to legislative initiatives requiring Georgia residents to show state-issued photo ID prior to voting. Shortly after the 11<sup>th</sup> Circuit Court of Appeals ruled Georgia's photo ID requirements unconstitutional, citing unlawful discrimination against marginalized groups, the Georgia legislature attempted to remedy this problem by amending the statute. Under the new statute, any prospective voter who did not have one of the six forms of appropriate photo ID could obtain a special photo ID for voting from the state at no cost. On July 3, 2006, two individual voters filed suit under Article II of the Georgia Constitution. Article II implies that all residents who meet minimal residency and registration requirements cannot be denied the right to vote. The court granted a preliminary injunction against enforcement of the statute, stating that it placed a "restrictive condition on the right to vote" in violation of Georgia's state Constitution. On July 12, 2006, the Georgia Supreme Court denied the state's request to stay the trial court's Order.
- **Status:** On September 19, 2006, the court permanently enjoined enforcement of the new law. Judge Bedford, Jr. held that Article II of the Georgia Constitution limited the grounds on which

a Georgia citizen may be denied the right to vote to felony convictions of moral turpitude and judicial determinations of mental incompetence. Requiring properly registered voters to present photo ID before their ballot could be counted is a violation of this provision. The case is pending on appeal to the Supreme Court of Georgia.

- **Parties:** The Plaintiffs, Rosalind Lake and Matthew L. Hess, were represented by Roy E. Barnes and Jennifer Auer Jordan of the Barnes Law Group, LLC. The Defendants included Governor Sonny Perdue, the State Election Board, and Fulton County Election Board members.

## *Indiana Democratic Party v. Rokita*

*Case No. 1:05-cv-00634. U.S. District Court, Southern District of Indiana.*

*Case No. 06-2218. U.S. Court of Appeals, 7<sup>th</sup> Circuit.*

- **Complaint:** This lawsuit challenges an Indiana statute requiring that voters provide valid photo identification prior to voting. If a person cannot provide the required photo identification, the person must vote provisionally and provide valid identification by the second Monday after the election to have the vote counted. If an individual does not have valid photo identification, he must sign an affidavit claiming indigency or religious objection to having personal photographs taken.
- **Status:** The district court denied plaintiffs' motion for declaratory and injunctive relief and granted defendants summary judgment on the merits. The Seventh Circuit Court of Appeals affirmed the district court's decision to grant summary judgment.
- **Plaintiffs and Counsel:** The original Plaintiffs included the Indiana Democratic Party and the Marion County Democratic Central Committee. However, several other organizations intervened, including: William Crawford, the United Senior Action of Indiana, Indianapolis Resource Center for Independent Living, Concerned Clergy of Indianapolis, Indianapolis Branch of the NAACP, Indiana Coalition of Housing and Homeless Issues, and Joseph Simpson. The legal team included the Indiana Civil Liberties Union, Fillenwarth, Dennerline, Groth & Towe, and Macey, Swanson & Allman.

## *Jackson County v. State of Missouri*

*No. 06AC-CC00587 Cole County Circuit Court, Missouri.*

- **Complaint:** This lawsuit, filed in July 2006, challenges provisions of Missouri statute, SBI014, that require voters to show state or federally-issued photo ID prior to voting. The Plaintiffs argue that SBI014's ID provisions violate the Hancock Amendment of the Missouri Constitution. Under the Hancock Amendment, the Missouri legislature is restricted from creating or expanding administrative duties of political subdivisions without also providing full state financing.
- **Status:** On September 14, 2006, Judge Richard Callahan declared the law violated the Missouri Constitution, holding that SBI014 created an "impermissible additional qualification to vote". The court also stated that the photo ID requirements placed a "great, if not insurmountable" burden on the elderly, poor, under-educated, and otherwise disadvantaged. On October 16 the Supreme Court of Missouri affirmed the lower courts decision.
- **Parties:** The Plaintiffs include Jackson County, Missouri and its County Executive Katheryn J. Shields, the City of St. Louis, Missouri and its mayor, Francis G. Slay, and Charlie A. Dooley, an individual taxpayer. The Defendant is the State of Missouri.

## NEOCH v. Blackwell,

*U.S. District Court for the Southern District of Ohio.\**

*Case No. 2:06-cv-00896- ALM-TPK; U.S. Court of Appeals, 6th Circuit, Case No. 06-4412.*

- **Complaint:** This lawsuit seeks to enjoin the implementation of Ohio's ID and provisional voting laws and to declare the laws unconstitutional on the grounds that they are vague, confusing and contradictory. The suit further alleges that county boards of election do not apply the laws uniformly. The complaint asserts that the statutory scheme and its uneven application works a fundamental unfairness and deprives voters' of their rights to Due Process and Equal Protection under the law. One specific issue raised in the complaint is that absentee voters in some counties had not been permitted to give their driver's license number or the last four digits of their social security number in lieu of a copy of another form of ID, thus putting the voters at risk of being disenfranchised. Other issues raised in the complaint are that the recently enacted statutes do not define what constitutes a "current" ID or "other government document," opening the door to widely varying views on what constitutes acceptable ID under Ohio law.
- **Status:** Judge Algenon Marbley of the U.S. District Court for the Southern District of Ohio, issued a temporary restraining order on October 26, 2006 against enforcement of the laws that applied to absentee voters. In an appeal by the Ohio Attorney General, the Sixth Circuit Court of Appeals stayed enforcement of that order on October 29, 2006. Days later, on November 1, 2006, the parties appeared at a previously scheduled hearing in the district court on remaining ID issues. After extensive negotiations, the parties agreed to a consent order to resolve the ID issues for the November 2006 federal election. The issues raised by the complaint remain to be decided for future elections. The consent decree provides that absentee ballots are to be counted in the 2006 election even the voter does not provide a form of ID, as long as the ballot has the voters name, address, date of birth and signature. The decree clarifies the meaning of a "current" non-photo ID, defining it as a one issued within one year that contains the voters' current address. Of importance to college students, the decree permit the students to use documents issued by their colleges or other educational institution as acceptable forms ID so long as the documents contain the student's name and current address. Under the order, any person who does not have an acceptable form of ID can provide the last four digits of their social security number and vote a provisional ballot. This permits homeless persons, among others, to cast a provisional ballot that will be counted if the voter is eligible and registered. The criteria for counting provisional ballots is clearly set out in the decree. The case is now awaiting trial in the district court.
- **Plaintiffs and Counsel:** The Plaintiffs in this case are the Service Employees International Union (SEIU) Local 1199 and the Northeast Ohio Coalition for the Homeless. Plaintiffs are represented by Caroline H. Gentry, Porter, Wright, Morris & Arthur, LLP; Subodh Chandra, The Chandra Law Firm, LLC; H. Ritchey Hollenbaugh, Carlile, Patchen & Murphey.

# FELON VOTING RIGHTS

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## *Farrakhan v. Locke\**

*No. 2:96-cv-00076-RHW, U.S. District Court, Eastern District of Washington.*

- **Complaint:** In this lawsuit, African, Hispanic and Native American individuals challenged Article VI, section 3, of the Washington Constitution, which denies felons the right to vote, and a Washington statute that provides for the restoration of voting rights to felons. The basis of the challenge was that the state's felon disenfranchisement scheme violates Section 2 of the Voting Rights Act because it has a disparate impact on minorities. The plaintiffs requested a declaration that the constitutional provision and the statute violated Section 2 and an injunction prohibiting defendants from enforcing the provision of the Washington Constitution that provided for the disenfranchisement of felons.
- **Status:** The district court decided in favor of the defendants, finding that although Washington's felon disenfranchisement scheme had a disparate impact on minority groups, it did not violate Section 2 of the Voting Rights Act because the racial discrimination was caused by sources outside of the voting system, specifically the criminal justice system. Thus, the plaintiffs had not shown a causal connection between the voting qualifications and a disparate impact on minority voting rights. The Ninth Circuit Court of Appeals reversed the judgment, ruling that a Section 2 analysis clearly required the court to consider factors that were external to the challenged voting system and that evidence of discrimination within the criminal justice system could be relevant to the analysis. The case was remanded to the district court for further proceedings. On July 7, 2006 the district court issued a decision granting defendants summary judgment, finding that the plaintiffs had failed to submit evidence that discrimination in the criminal justice system amounted to discrimination in the electoral process. Plaintiffs have again appealed to the Ninth Circuit where it is pending.
- **Plaintiffs and Counsel:** The plaintiffs were Hispanic, African-American, and Native American individuals who had been convicted of felonies in Washington. They were represented on appeal by Lawrence A. Weiser, Spokane, Washington and Jason T. Vail, Spokane, Washington. In the district court, they were represented by University Legal Assistance, Spokane, Washington, the NAACP Legal Defense Fund, and Dennis Cronin of Maxey Law Offices PS, Spokane Washington.

## *Hayden v. Pataki/Muntaqim v. Coombe*

*Hayden v. Pataki*, Case No. 1:00-cv-08586-LMM-HBP, United States District Court, Southern District of New York. *Muntaqim v. Coombe*, Case No. 9:94-cv-1237(NAM)(GJD), United States District Court, Northern District of New York. Cases consolidated on appeal to the United States Court of Appeals for the Second Circuit, Case No. 01-7260.

- **Complaint:** This is a consolidation of two lawsuits filed by individuals affected by a New York statute that denied voting rights to felons who were currently incarcerated or on parole. The plaintiffs claimed that the statute had a discriminatory impact on Latinos and African-Americans, resulting in disparate vote denial and vote dilution for minorities, in violation of the 1<sup>st</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments as well as Section 2 of the Voting Rights Act of 1965.
- **Status:** The U.S. District Court in the Northern District of New York granted summary judgment to defendants in the Muntaqim case, finding that the VRA had no application to New York State's disenfranchisement statute. Relying in part on the ruling in the Muntaqim case, the U.S. District Court for the Southern District of New York granted a judgment to defendants in the Hayden case, finding that there was nothing in the pleadings that would support the constitutional or VRA claims raised by plaintiffs. The cases were consolidated on appeal, and a three-judge panel of the Second Circuit Court of Appeals affirmed the district court decision in Muntaqim. The Second Circuit agreed to hear the case en banc. The en banc court dismissed the Muntaqim case because the plaintiff lacked standing. In the Hayden case, the en banc court affirmed the district court's decision, ruling that the VRA does not encompass felon disenfranchisement laws.
- **Plaintiffs and Counsel:** Jalil Abdul Muntaqim, pro se. In Hayden, individuals currently incarcerated or on parole in New York State, on their on own behalf, and the NAACP Legal Defense and Educational Fund, Community Service Society of New York, Center of Law and Social Justice at Medgar Evers College. *Amicus Curiae:* Lawyers' Committee for Civil Rights Under Law, People for the American Way Foundation, National Black Law Students Association Northeast Region, The National Voting Rights Institute, Prison Policy Initiative, Derek S. Tarson, Debevoise & Plimpton LLP, New York, New York; Civil Liberties Union Foundation, Laughlin McDonald; ACLU Voting Rights Project (*of counsel*); American Civil Liberties Union Foundation, New York, N.Y.; Center for Community Alternatives, National Association of Criminal Defense Lawyers, New York Association for Criminal Defense Lawyers, and the Sentencing Project, Zachary W. Carter, Veronica Coleman-Davis, Scott Lassar, Leonard Marks, Paul Schechtman, National Black Police Association, National Latino Officers Association of America, and 100 Blacks in Law Enforcement Who Care; Brennan Center for Justice and the University of North Carolina School of Law Center for Civil Rights.

## ***Madison et. al. v. State of Washington***

*No. 04-2-33414-4 SEA, Superior Court of Washington, King County.*

- **Complaint:** Plaintiffs, three persons convicted of felonies in the State of Washington, filed a lawsuit seeking a declaration that a Washington statute that conditioned the restoration of civil rights and the right to vote on the completion of all the requirements of a felon's sentence, including any legal financial obligations, was unconstitutional. Plaintiffs, who were currently paying monthly amounts toward their obligations, argued that the Washington statute impermissibly discriminated against citizens on the basis of wealth, in violation of the Equal Protection Clause.
- **Status:** On March 26, 2006, the trial court ruled that the Washington statute that required felons to satisfy all legal financial obligations in order to be reinstated to their right to vote was unconstitutional. Although the State clearly had the right to disenfranchise felons, legislation that created conditions under which felons could be restored to their civil rights was subject to an analysis of whether the terms of the statute were rationally related to its purpose. The court ruled that it could find no rational basis for granting the right to vote to felons who could



pay their obligations immediately while denying that right to felons who required additional time to pay them. The defendants appeals to the Supreme Court of Washington where it is currently pending.

- **Parties:** Plaintiffs are five individual residents of Washington who have been convicted of felonies and have completed all nonfinancial terms of their settlements, but who have outstanding legal financial obligations. Plaintiffs are represented by the American Civil Liberties Union of Washington, Heller, Ehrman White & McAuliffe LLP, and the Voting Rights Project of the American Civil Liberties Union. Defendants are (former) Governor Gary Locke and Secretary of State Sam Reed in their official capacities.

# GENERAL ELECTION ADMINISTRATION

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## *League of Women Voters of Ohio et. al. v. Blackwell*

*No. 3:05CV7309, United States District Court, Northern District, Western Division.*

*Case No. 06-3335. U.S. Court of Appeals for the Sixth Circuit.*

- **Complaint:** The League of Women Voters (LWV) and individual plaintiffs challenged the Ohio election system on the grounds that it denied equal rights to voters by applying non-uniform standards, by utilizing inadequate equipment, procedures and systems, by employing untrained or under-trained personnel, and by under funding the election process. Plaintiffs asserted that the election system maintained by the defendants violated the 14<sup>th</sup> Amendment and the Help America Vote Act (HAVA), and that it interfered with Plaintiffs' rights to substantive and procedural due process.
- **Status:** Defendant officials filed motions to dismiss the case, which the district Court denied in part and affirmed in part. The court found that the HAVA claims were barred because HAVA was not yet implemented in Ohio. The Plaintiffs had, however, stated valid equal protection and due process claims under the 14<sup>th</sup> Amendment. Defendants' later motion for dismissal on the grounds of sovereign immunity was denied and the district court certified that claim as frivolous, thereby retaining the right to continue with the case while Defendants appealed the denial of that claim. Defendants have appealed the denial of their dismissal motions to the U.S. Court of Appeals for the Sixth Circuit where it is currently pending.
- **Plaintiffs and Counsel:** League of Women Voters of Ohio, League of Women Voters of Toledo-Lucas County, individual Ohio voters. Connelly, Jackson, and Collier; Lawyers' Committee for Civil Rights Under Law; Proskauer Rose LLP; Arnold and Porter LLP; National Voting Rights Institute; People for the American Way Foundation, Lawyers' Committee for Civil Rights of the San Francisco Bay Area. On appeal for LWV, Kathleen McCree Lewis, Brenda Wright.

# VOTING EQUIPMENT

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## *Jennings v. Elections Canvassing Commission of the State of Florida/Jennings v. Dent*

2006 CA 002973, Second Judicial Court, Leon County Florida.

2006 CA 010848 NC, Twelfth Judicial Court, Sarasota County Florida.

Case Number ID07-II, District Court of Appeals - First District of Florida.

- **Complaint:** This lawsuit was brought by a candidate for the United States House of Representatives who lost an election by less than 400 votes. The complaint alleges that malfunctioning voting machines failed to register almost 18,000 votes that were cast in the race the plaintiff lost. The complaint seeks decertification of the election results and either a declaration that the plaintiff prevailed or that the seat is vacant and a new election be held.
- **Status:** The plaintiff sought discovery of the source codes for the voting machines that plaintiff alleged malfunctioned. The trial court denied the request, finding the source codes were trade secrets. Plaintiff has filed an interlocutory appeal to the Florida Supreme Court requesting the trial court decision be overturned and that plaintiff be given access to the source codes. The motion is pending.
- **Plaintiffs and Counsel:** Plaintiff was a candidate for the United States House of Representatives in the 13<sup>th</sup> District in Florida. Plaintiff is represented by Kendall Coffey of the law firm of Coffey & Wright and Mark Herron of the law firm of Messer, Caparello & Self. The Defendants are the Elections Canvassing Commission of the State of Florida and its members and Vern Buchanan, the Republican nominee for the Congress in the 13<sup>th</sup> Florida District.

## *Callen v. Blackwell*

Case No. 06 CV 014411, Court of Common Pleas, Franklin County, Ohio.

- **Complaint:** The lawsuit, filed on November 14, 2006, challenges the use of the Diebold DRE machines, claiming they do not comply with Ohio's constitution and statutes or the Ohio disability laws.
- **Status:** The Court dismissed all counties that were suited despite there being no plaintiff who was a qualified voter in the county. The case is pending before the trial court.
- **Plaintiffs and Counsel:** Plaintiffs are five qualified voters from four different counties. Plaintiffs' Counsel is Pamela N. Hultin from the law firm of Smith and Hultin. Defendants are the Secretary of State and the County Board of Elections.

## **Banfield v. Cortes**

*Case No 442 MD 2006, Commonwealth Court of Pennsylvania, Philadelphia.*

- **Complaint:** The lawsuit, filed on August 15, 2006, challenges the State's certification of paperless electronic voting machines.
- **Status:** The case is pending before the trial court.
- **Plaintiffs and Counsel:** Plaintiffs are twenty five qualified voters from four different counties. Plaintiffs' Counsel are Mary E. Kohart from the law firm Drinker Biddle & Reath, Marian K. Schneider, Michael Churchell from the Public Interest Law Center of Philadelphia and Lowell Finley. The Defendant is the Secretary of State.

## **Conroy et. al. v. Dennis et. al.**

*No. 06CV6072. State of Colorado District Court, Denver County.*

- **Complaint:** This lawsuit seeks to stop the purchase and planned use of DRE voting machines in Colorado. The complaint alleges, among other things, that (1) Secretary of State Dennis failed to follow state law when certifying several models of DRE machines for use in Colorado elections, (2) the machines in question do not meet state standards for accessibility for the disabled, and (3) use of the machines violates state constitutional rights to free and fair elections and equal protection.
- **Status:** Plaintiffs filed a complaint on June 1, 2006, in state court and followed on June 28, 2006, with a motion for preliminary injunction. On September 22, 2006 the trial court issued a ruling that, prior to November 7, 2006, the Secretary of State issue rules containing minimum security standards, retest previously certified systems and require county election officials to implement minimum security standards.
- **Plaintiffs and Counsel:** Plaintiffs are thirteen individuals who are registered to vote in Colorado. Plaintiffs are represented by the Law Firm of Wheeler Trigg Kennedy LLP and the Law Office of Lowell Finley (see [www.VoterAction.org](http://www.VoterAction.org)). Defendants are Secretary of State Ginnette Dennis and the board of county commissioners for the counties of: Arapahoe, Adams, Boulder, Broomfield, Douglas, Jefferson, La Platta, Larimer and Weld.

## **Chavez et. al. v. Brewer et. al.**

*Arizona Superior Court, Maricopa County.*

- **Complaint:** This lawsuit, filed May 11, 2006, seeks declaratory and injunctive relief to stop the purchase and use of Diebold and Sequoia DRE voting machines and a writ of mandamus compelling the state to purchase voting machines that tabulate votes accurately and are accessible to the disabled. The complaint alleges that Defendants have, as a result of their purchase and plan to use Diebold and Sequoia DRE voting machines, failed to (1) comply with HAVA's requirements to provide voting machines that are accessible to disabled voters and that produce an auditable paper record, (2) purchase machines that accurately tabulate votes as required by state law, and (3) safeguard voters' right to "purity of election" as provided by the state constitution. Plaintiffs also allege Defendants' purchase and planned use of Diebold and Sequoia DRE voting machines violate state constitutional rights to suffrage and equal protection.

- **Status:** The lawsuit and accompanying motion for a preliminary injunction were filed on May 11, 2006 in Arizona Superior Court, Maricopa County. Arizona Superior Court Judge Barry Schneider granted motions to dismiss the plaintiffs' complaint in *Chavez v. Brewer*. The judge stated in a brief written order that he chose to exercise judicial restraint, deferring to the state's voting system selection process. Plaintiffs have appealed the ruling to the State Court of Appeals where it is pending.
- **Parties:** Plaintiffs are four registered Arizona voters, one of whom "has low vision and wishes to vote independently." Plaintiffs are represented by the law firm of Perkins Coie Brown & Bain P.A. and the Law Office of Lowell Finley (see [www.VoterAction.org](http://www.VoterAction.org)). Defendants are Secretary of State Jan Brewer as well as thirteen county recorders and their respective counties.

### ***Taylor et. al v. Onorato et al.***

*No. 2:06-cv-00481-GLL. U.S. District Court, Western District of Pennsylvania.*

- **Complaint:** This lawsuit, filed on April 12, 2006, challenged Allegheny County's choice of voting machines. Plaintiffs alleged that the County's purchase and use of "iVotronic voting machines together with M650 scan counters and paper ballots" violated plaintiffs' right to vote on machines meeting HAVA standards and, by failing to properly record votes cast, violated the Due Process Clause and the Equal Protection Clause of the 14<sup>th</sup> Amendment. The complaint further alleged that Allegheny's choice of voting machine violated the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.) and the Rehabilitation Act (USC § 794). Finally, the complaint alleged a violation of the 5<sup>th</sup> Amendment on the grounds that federal Defendants Alberto Gonzalez and Wan Kim treated the State of Pennsylvania more severely than the State of New York with respect to each state's timeline for complying with the voting machine standards of HAVA and, as a result, Allegheny County made a hasty and poor decision in its choice of machines.
- **Status:** The plaintiffs' motion for a preliminary injunction was denied on April 28, 2006. On June 6, 2006, plaintiffs voluntarily dismissed the lawsuit.
- **Parties:** Plaintiffs were seven registered voters of Allegheny County and People for the American Way. Plaintiffs were represented by Litman Law Firm, Reich, Alexander, Reisinger, and Farrell, LLC, Montgomery, McCracken, Walker and Rhoads, LLP, Zuckerman Spaeder LLP, and People for the American Way Foundation (co-counsel for PFAW). Defendants were Allegheny County Chief Executive Dan Onotaro, Secretary of the Commonwealth Pedro Cortes, Commissioner Harry Vansickle of the Pennsylvania Bureau of Legislation, Elections and Commissions, the Allegheny County Board of Elections, Allegheny County Manager James Flynn, US Attorney General Alberto Gonzalez and Assistant Attorney General, Civil Division, Wan Kim.

### ***Lopategui et. al. v. Vigil-Giron et. al.***

*No. D-202-CV-200500433, New Mexico State Court, Albuquerque District.*

- **Complaint:** This lawsuit, filed January 14, 2004, alleges that the use of certain DRE voting machines (1) do not produce a verified paper trail in violation of New Mexico law, (2) are not accessible to disabled voters in violation of state law and HAVA, (3) and are so flawed that they violate the state constitution's guarantee of equal protection, due process and pure elections. The complaint seeks declaratory and injunctive relief.

- **Status:** Plaintiffs' initial motion for a temporary restraining order was denied on January 20, 2005. On May 17, 2005, Defendant Vigil-Giron moved for summary judgment, and then on December 20, 2005, plaintiffs moved for a temporary restraining order and a preliminary injunction. In a February 2006 hearing on Defendants' motion for summary judgment, the court released the county clerks from the suit but allowed the case to go forward against Secretary Vigil-Giron. New Mexico has switched to paper ballots so the case may be moot at this point.
- **Parties:** Plaintiffs are six individuals who are registered voters in New Mexico. Plaintiffs are represented the law firm of Freedman, Boyd, Daniels, Hollander, & Goldberg LLP, Garcia & Vargas, and by the Law Office of Lowell Finley (see [www.VoterAction.org](http://www.VoterAction.org)). Defendants are Secretary Vigil-Giron and eleven county clerks (who have since been dismissed).

### *Holder et. al. v. McPherson et. al.*

*No. CPF 06-506171. Superior Court of the State of California, City and County of San Francisco.*

- **Complaint:** This lawsuit, filed March 21, 2006, seeks a court order stopping the use of Diebold DRE voting machines, which had been conditionally certified by the Secretary of State, and a writ of mandamus compelling the state to purchase voting machines that meet the requirements of California election law. The complaint alleges, among other things, that the Diebold DRE machines are prone to failure and security violations contrary to the requirement of California's law establishing standards for election machines, produce no usable audit trail, violate voters' constitutional rights, and were unlawfully "conditionally" certified.
- **Status:** On September 14, the court denied the preliminary injunction and authorized the used of the challenged machines in the November 7, 2006 elections. Plaintiffs are continuing to pursue the case.
- **Parties:** Plaintiffs are twenty-five individuals who are registered to vote in California. Plaintiffs are represented by Howard, Rice, Nemerovski, Canady, Falk & Rabkin PA and the Law Office of Lowell Finley (see [www.VoterAction.org](http://www.VoterAction.org)). Defendants include California Secretary of State Bruce McPherson, the election directors of twelve California counties and Does 1-50.

### *Gusciora et. al. v. McGreevey et. al.*

*No. Superior Court of New Jersey, Law Division, Mercer County.*

*No. A-2842-4T1. Superior Court of New Jersey, Appellate Division.*

- **Complaint:** This lawsuit alleges that the Defendants violated the New Jersey constitution and state law by failing to take measures to overcome Direct Recording Electronic (DRE) voting machines' alleged shortcomings, specifically their inability to produce a paper record and their ease of tampering. The complaint alleges violation of the right to vote and right to equal protection under the state constitution, as well as violations of state election law related to security of voting machines and recounts.
- **Status:** The new state law required that all voting machines produce individual, permanent paper records by January 2008. Since the state still has the opportunity to upgrade voting machines that are currently unable to produce paper trails, the appellate court dismissed the case as moot on June 29, 2006. The court noted, however, that: "the constitutional issue would remain if the legislation is not timely and successfully implemented, as the State and Attorney General have represented, in their brief and argument before us, it would be."

- **Parties:** Plaintiffs are a New Jersey Assemblyman, a registered voter who tried but failed to vote on a DRE machine and two civic organizations. The Rutgers Constitutional Law Clinic represents the plaintiffs. Defendants are the New Jersey Governor and Attorney General.

## ***Stewart et. al. v. Blackwell***

*444 F.3d 843 (2006), Sixth Circuit Court of Appeals.*

- **Complaint:** In this lawsuit, filed October 11, 2002, a group of Ohio citizens challenged the use of non-uniform, and unreliable voting technologies (including punch card ballot devices) in some Ohio counties while other counties used more modern, reliable equipment such as electronic ballot systems. The older voting devices did not provide notice to voters of an undervote or overvote in their ballots, while the newer electronic systems did provide such notice. The citizens argued that this disparity in the voting systems violated the Equal Protection Clause and the citizens' due process right to have their votes counted by reliable means. Plaintiffs charged, and produced evidence tending to show, that the use and distribution of punch card systems had a disparate impact on African-American voters, in violation of the Voting Rights Act of 1965. The suit requested an injunction prohibiting defendants, Ohio elections officials, from certifying the unreliable voting systems for use, ordering the defendants to use uniform voting systems that did not have a disparate impact on the voting strength of minority groups, and ordering defendants to implement uniform standards to record all undervotes and overvotes.
- **Status:** On April 21, 2006, the Sixth Circuit Court of Appeals overturned the district court's judgment against plaintiffs on their Equal Protection and Voting Rights Act claims and ruled that Ohio's use of the disparate, unequal voting technologies violated the Equal Protection Clause. The appellate court remanded the case to the district court for further factual determinations on the issue of whether the use of the non-notice voting systems violated the Voting Rights Act, "considering the totality of the circumstances." The Circuit Court agreed to hear the case en banc but before the hearing was held plaintiffs agreed the case was moot because the challenged voting equipment had been replaced throughout the state. The case was dismissed with consent of all parties.
- **Parties:** The plaintiffs in this case were individual citizens from four Ohio counties, Summit, Hamilton, Montgomery, and Sandusky. The denial of their motion for class certification was reversed on appeal. Plaintiffs were represented by the American Civil Liberties Union of Ohio Foundation, American Civil Liberties Union Voting Rights Project, and Paul Moke, Professor of Social and Political Science, Wilmington College; Richard Saphire, Professor of Law, University of Dayton, of counsel.

# HELP AMERICA VOTE ACT COMPLIANCE

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## *United States v. Cochise County*

*No. 4:06-cv-00304-FRZ. U.S. District Court, District of Arizona, Tucson Division.*

- **Complaint:** This lawsuit, filed June 15, 2006, alleges that Cochise County failed to provide election information in Spanish as required by Section 203 of the Voting Rights and failed to post in each polling place the voting information required by section 302 of HAVA.
- **Status:** A joint stipulation and proposed consent decree were entered with the complaint. In the proposed consent decree, Cochise County acknowledges it violated Section 302 of the Voting Rights Act and section 302 of HAVA. The County agrees, among other things, to: (1) provide Spanish translation of a wide range of English-language election materials, (2) ensure the presence of bilingual poll workers, (3) appoint a program coordinator and establish an advisory committee to guide the County's implementation of their Spanish-language election program, and (4) cooperate with federal election observers. On October 12, 2006 the court entered the consent decree.
- **Plaintiffs and Counsel:** This suit was brought by the Voting Section of the US Department of Justice against Cochise County, its Board of Supervisors, its County Recorder and its Director of Elections and Special District Divisions.

## *United States v. State of Alabama et. al.*

*No. 2:06-cv-392-SRW, U. S. District Court for the Middle District of Alabama, Northern Division.*

- **Complaint:** The lawsuit, filed May 1, 2006, sought declaratory and injunctive relief for the Defendants' alleged failure to implement the Help America Vote Act's requirements to create (1) a statewide computerized voter registration list, (2) matching procedures for first-time registrants who register by mail, and (3) a voter registration application that facilitates the matching requirements.
- **Status:** On June 7, 2006, a federal district court judge granted plaintiff's motion for a preliminary injunction and entered an order of declaratory judgment in favor of the plaintiff. The preliminary injunction ordered the defendants to promptly develop a HAVA plan that includes, among other elements, (1) the immediate revision of voter registration applications, (2) an interim plan to make the state's current voter registration system as compliant as possible, (3) a procurement plan for a new statewide computerized database, (4) the implementation of rules, regulations and procedures related to voter verification, voter identification, and list maintenance, and (5) the network connections needed to obtain data from other agencies for the purpose of identifying ineligible voters. Subsequent court action on this case has related to the time and terms of complying with the court's order.



- **Plaintiffs and counsel:** The Voting Section of the US Department of Justice brought this suit against the State of Alabama and Secretary of State Worley in her official capacity.

## *United States v. New York State Board of Elections*

*No. 06-CV-0262, U.S. District Court, Northern District of New York.*

- **Complaint:** This lawsuit, filed March 1, 2006, seeks declaratory and injunctive relief for the Defendants' alleged failure to implement the voting system standards and statewide voter list provisions of HAVA. With respect to the voting system standards, the complaint supports its allegation by noting that the State Board failed to (1) approve any voting systems, (2) adopt any final rules or regulations related to voting systems, and (3) obtain any voting systems that comply with the requirements of HAVA. With respect to statewide voter list, the complaint notes that, among other things, the State Board has failed to (1) publish any rules or regulations governing the statewide voter list, (2) take the necessary steps to contract for the development of a statewide voter database, and (3) establish the necessary agreements with the Social Security Administration to match voter registration information.
- **Status:** DOJ sought a preliminary injunction on March 6, which was granted by the court on March 23, 2006. The court ordered the State Board of Elections to file a remedial HAVA implementation plan by April 10, 2006, and provided DOJ ten days to respond, later extended to eighteen days. The state Board filed its HAVA plan with court on April 10, and Plaintiffs' responded on April 18<sup>th</sup> agreeing to the plan. On June 2, the court ruled that the Board's HAVA plan would bring the state, over time, into full compliance and set a series of deadlines for implementation and reporting. Currently before the court is a motion to intervene by a diverse coalition of civic organizations that is concerned about the adequacy of the state's plan.
- **Parties:** This lawsuit was filed by the Voting Section of the US Department of Justice against the New York State Board of Elections, its Co-Executive Directors and the State of New York.

# NVRA SECTION 7 COMPLIANCE

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## *Harkless v. Blackwell*

*Case No. 1:06-cv-02284-PAG, U.S. District Court for the Northern District of Ohio.*

- **Complaint:** The lawsuit was filed by two public assistance recipients and a community based organization challenging Ohio's implementation of Section 7 of the National Voters Registration Act. The complaint alleges Ohio has failed to implement the act's requirement that public assistance recipients be offered the opportunity to register to vote at the time they obtain services related to public assistance.
- **Status:** The Court dismissed the case finding that the Secretary of State and Director of Public Assistance were not the appropriate parties because they did not have authority over the county public assistance agencies' voter registration activities. The community organization was also dismissed for lack of standing. The plaintiffs have moved for the Court to reconsider the decision.
- **Plaintiffs and Counsel:** Plaintiffs are two individuals who sought services from the department of public assistance and were not offered the opportunity to register and the Association of Community Organizations for Reform Now. Counsel for Plaintiffs are Donna Taylor Kolis, the law firm of Dechert LLP, The National Voting Rights Institute, the Lawyers Committee for Civil Rights Under Law and Project Vote.





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